

A GUIDE TO THE ENFORCEMENT OF THE NEW JERSEY CIGARETTE TAX ACT

NJSA 54:40A-1, et seq. & Other Related Acts



DISTRIBUTED BY THE
N.J. DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
OFFICE OF CRIMINAL INVESTIGATION
50 BARRACK STREET
PO BOX 284
TRENTON, NEW JERSEY 08695-0284

Revised 10/03

“PROTECTING THE REVENUE”

The original Cigarette Tax Act, passed by the NJ Legislature in 1948, has undergone numerous amendments. The law provides for the licensure of various levels of the cigarette industry from retailers to manufacturers. The law also regulates the sale, storage, use and transportation of cigarettes, both stamped and unstamped, within the State. These laws and their attendant Administrative Code provisions are enforced by the Department of the Treasury, Division of Taxation, Office of Criminal Investigation (OCI) through both the Municipal and Superior Courts of the State of New Jersey. The Director of the Division of Taxation may also apply administrative sanctions against licensees. These enforcement activities “Protect the Revenue” of the State and the programs those revenues fund.

Areas of Non-Compliance

The NJ Criminal Code 2C:64-1.a.(1) defines **untaxed cigarettes** as **prima facie contraband**. Untaxed means any cigarettes that do not bear the required NJ tax stamp as approved by the Director, Division of Taxation. Examples of untaxed cigarettes include unstamped, other states stamped, and counterfeit NJ stamped cigarettes.

Unlawful Sales

- Selling NJ stamped cigarettes without a license (Disorderly Persons Offense).
- Selling untaxed cigarettes with the intent to evade taxes (4th Degree Crime).

Unlawful Possession

- Possession of untaxed cigarettes (Disorderly Persons Offense).
- Possession of untaxed cigarettes, 100 cartons or more (Indictable Offense, \$1,000.00 fine and/or up to **1 year** in jail).

Unlawful Transportation

- Transportation of contraband cigarettes (Disorderly Persons Offense). *Vehicle subject to seizure and forfeiture by the courts.*

The transportation of untaxed cigarettes in or through NJ requires specific licenses, actions and documents which provide consignor and consignee information, a full inventory and verification of who will assume the cigarette tax liability either in NJ or another state.

Counterfeit Stamps

- Forgery – Known to be Forged (3rd to 2nd Degree Crime).
- Manufacture and/or sale of counterfeit stamps (3rd Degree Crime).
- Possession of counterfeit stamps (3rd Degree Crime).
- Possession of 10 or more cartons of cigarettes with counterfeit stamps (3rd Degree Crime).
- Possession of less than 10 cartons with counterfeit stamps (Disorderly Persons Offense).

Counterfeit Manufactured Cigarettes

Cigarettes that are unlawfully manufactured to appear as if they are legitimate “Brands” are in violation of the NJ Trademark and Counterfeiting Act. NJSA 2C:21-32 violations range from 4th to 2nd degree crimes.

Subject to Confiscation and Forfeiture

- Untaxed cigarettes, US Tax Exempt or Duty Free and Counterfeit manufactured cigarettes.
- Cigarette vending machines that are not properly licensed or that contain untaxed cigarettes, or counterfeit manufactured cigarettes.
- Any vehicle, vessel, device or paraphernalia used in the unlawful transportation of contraband cigarettes.
- Any monies that are the proceeds of the sale of contraband cigarettes.

Penalties under the NJ Criminal Code

- 2nd Degree Crime \$150,000.00 and/or up to 10 years in prison.
- 3rd Degree Crime \$15,000.00 and/or up to 5 years in prison.
- 4th Degree Crime \$10,000.00 and/or up to 18 months in prison.

- Disorderly Persons Offense \$1,000.00 fine and/or up to 6 months in jail.
- **Second or subsequent offenders convicted of any violation of any tax offense may be fined up to twice the fines authorized by the Criminal Code. NJSA 2C:43-3.g.**

WHAT TO WATCH FOR...

New Jersey utilizes a heat transfer tax stamp as an indicia that the State cigarette tax has been paid. **These stamps can only be purchased or possessed by NJ licensed cigarette distributors.** Each roll has a serial number which identifies the distributor who purchased it.

Be Alert For

- Cigarette packs without the NJ tax stamp.
- Unstamped cigarette packs or packs affixed with other states’ cigarette tax stamps.
- Untaxed cigarettes transported in rental or personal cars, vans or trucks.
- Subjects selling cigarettes from the trunk of a car, a van or truck.
- Cigarette cartons wrapped in cellophane.
- Cigarette packs marked “For Export Only,” “US Tax Exempt” or “Duty Free.”
- Offers to sell below the NJ State minimum price set by law outside of approved promotions.
- Sales at retail establishments “from under the counter.”
- Retailers/Wholesalers with expired licenses. Retailers/Wholesalers without invoices to document purchases.
- Cigarettes sold by mail order or the Internet.

SALES TO MINORS

Law enforcement officers and local health officials are empowered to enforce the provisions of NJSA 2C:33-13.1, which forbids the sale of tobacco products to anyone under the age of 19. Violations should be referred to the local or regional Board of Health.

WHOLESALE TOBACCO PRODUCTS SALES & USE TAX

The Wholesale Tobacco Products Sales and Use Tax Act imposes a 30% sales or use tax on all tobacco products exclusive of cigarettes. This would include but is not limited to:

- Cigars
- Pipe tobacco
- Snuff
- Chewing tobacco

This 30% tax is imposed upon the wholesale price upon the sale, use or distribution of a tobacco product within this State. Wholesale price means the actual price for which a manufacturer sells tobacco products to a distributor. Every distributor or wholesaler shall be liable to pay the tax when it has sold or otherwise disposed of the tobacco product to the retail dealer or consumer. The retail dealer or consumer shall be given an invoice, receipt or other statement or memorandum stating that the tax has been paid or will be paid by the distributor or wholesaler. If the distributor or wholesaler has not paid the wholesale sales tax, then the compensating use tax shall be payable by the retail dealer or consumer directly to the Division of Taxation within twenty (20) days of the date the tax was required to be paid.

With the exception of cigarettes, tobacco products do not bear a NJ tax stamp to prove the tax has been paid. Compliance is accomplished by the examination of purchase and sales invoices along with the registration of those in the industry.

Evasion of the WTPS&U Tax Act carries criminal penalties similar to violations of the Cigarette Tax Act.

Undocumented importation from other states is the most common form of evasion. OCI along with other units of the Division of Taxation are enforcing the provisions of this act both by criminal prosecution and audits of tobacco product retailers, wholesalers and suppliers.

COOPERATION IS THE KEY TO SUCCESS

SPECIAL AGENTS ASSIGNED TO OCI ARE RESPONSIBLE FOR THE ENFORCEMENT OF THE CIGARETTE TAX ACT AND OTHER RELATED ACTS SUCH AS THE WHOLESALE TOBACCO PRODUCTS SALES AND USE TAX ACT.

The Office of Criminal Investigation will:

- Examine evidence for counterfeit stamps and counterfeit cigarettes.
- Investigate violations of the Cigarette Tax Act and other criminal violations of the laws administered by the Division of Taxation.
- File charges in the court of jurisdiction.
- Seize contraband, vehicles, vessels, devices, paraphernalia and monies subject to forfeiture.
- Act as a liaison between other law enforcement agencies and the cigarette/tobacco industry.
- Provide for the storage of evidence and eventual disposition upon adjudication of the case.

Cigarette Smuggling is a Crime That Affects All of Us.

- State programs, and the citizens they serve, lose when tax revenues are not realized.
- Legitimate, licensed retailers, wholesalers and distributors are forced to compete against a black market in cigarettes & tobacco products.
- Voluntary tax compliance is eroded.

IF YOU SUSPECT VIOLATIONS OF THE CIGARETTE TAX LAWS, NEED ASSISTANCE, OR HAVE QUESTIONS ABOUT THE CIGARETTE & TOBACCO PRODUCTS LAWS CALL:

THE OFFICE OF CRIMINAL INVESTIGATION

609-291-7865 — Monday–Friday

609-291-7153 — Nights & Weekends